



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

(A-570-827)

Certain Cased Pencils From the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b), ThinkGeek, Inc. (ThinkGeek) filed a request for a changed circumstances review of the antidumping duty (AD) order on certain cased pencils (pencils) from the People's Republic of China (PRC) to revoke the AD order with respect to novelty drumstick pencils. The domestic industry has affirmatively expressed a lack of interest in continuing the AD order with respect to this product. In response to ThinkGeek's request, the Department of Commerce (the Department) is initiating a changed circumstances review to be conducted on an expedited basis and issuing a notice of preliminary intent to revoke, in part, this order. Pursuant to ThinkGeek's request, this partial revocation would be applied retroactively to June 1, 2011. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 1, 2011

FOR FURTHER INFORMATION CONTACT: Elizabeth Gorman at (202) 482-1174 or Yasmin Nair at (202) 482-3813; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Background

On December 28, 1994, the Department published in the *Federal Register* the AD order on certain cased pencils from China. *See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China*, 59 FR 66909 (December 28, 1994) (AD order). On May 23, 2012, in accordance with section 751(b) and 751(d)(1) of the Act, 19 CFR 351.216(b), and 19 CFR 351.222(g)(1), ThinkGeek, a U.S. importer of subject merchandise, requested revocation in part, of the AD order with respect to its novelty pencil, which is shaped like a drumstick, as part of a changed circumstances review. ThinkGeek's novelty drumstick pencil is made to look like a pencil, except that it is shaped as a drumstick. This pencil is longer than regular wooden pencils and does not contain an eraser. ThinkGeek requested that the Department conduct the changed circumstances review on an expedited basis pursuant to 19 CFR 351.221(c)(3)(ii).

Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical

characteristics: (1) *Length*: 13.5 or more inches; (2) *sheath diameter*: not less than one-and-one quarter inches at any point (before sharpening); and (3) *core length*: not more than 15 percent of the length of the pencil.

In addition, pencils with all of the following characteristics are excluded from the order: novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three-and-one eighth inches in circumference, composed of turned wood encasing one-and-one half inches of sharpened lead on one end and a rubber eraser on the other end.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope and order is dispositive.

Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, and Intent To Revoke the Order in Part

At the request of ThinkGeek, and in accordance with sections 751(b)(1) and 751(d)(1) of the Act and 19 CFR 351.216 and 19 CFR 351.222(g)(1), the Department is initiating a changed circumstances review of novelty drumstick pencils from the PRC to determine whether partial revocation of the AD order is warranted with respect to this product. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In its administrative practice, the Department has interpreted “substantially all” to mean at least 85 percent of the total production of the domestic like product covered by the order. *See, e.g., Certain Pasta From Italy: Final Results of Countervailing Duty Changed*

Circumstances Review and Revocation, In Part, 76 FR 27634, 27635 (May 12, 2011). In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

On May 23, 2012, ThinkGeek submitted a letter from petitioners and domestic pencil producers Sanford, L.P.; Musgrave Pencil Company and General Pencil Company (collectively, Petitioners) expressing a lack of interest in maintaining the AD order with respect to the novelty drumstick pencils identified in ThinkGeek's request. On June 5, 2012, Petitioners submitted a letter stating that they comprise "substantially all" of the production of the domestic like product, as provided in section 782(h) of the Act and 19 CFR 351.222(g)(1)(i), in that they account for at least 85 percent of such production. *See* ThinkGeek's letter dated June 5, 2012. Also, ThinkGeek's letter requested that this partial revocation be retroactively applied to ThinkGeek's drumstick pencils, entered or withdrawn from warehouse, for consumption, on or after June 1, 2011, which would apply to any remaining unliquidated entries of this product. *See id.*

In accordance with section 751(b) of the Act, 19 CFR 351.216, 19 CFR 351.222(g), and 19 CFR 351.221(c)(3)(ii), we are initiating this changed circumstances review and have determined that expedited action is warranted. In accordance with 19 CFR 351.222(g)(1), we find that Petitioners' affirmative statements of no interest constitutes good cause for the conduct of this review. Additionally, our decision to expedite this review pursuant to 19 CFR 351.221(c)(3)(ii) stems from the domestic industry's lack of interest in applying the AD order to these drumstick novelty pencils, described above, covered by ThinkGeek's request.

Based on the expression of no interest by Petitioners and absent any objection by other domestic interested parties, we preliminarily determine that substantially all of the domestic

producers have no interest in the continued application of the AD order on pencils from the PRC to the merchandise that is subject to ThinkGeek's request. Therefore, we are notifying the public of our intent to revoke, in part, the AD order as it relates to imports of drumstick novelty pencils, as described above, from the PRC. This partial revocation would be retroactively applied to entries of novelty drumstick pencils, entered or withdrawn from warehouse, for consumption, on or after June 1, 2011, a date after the last day of the most recently completed administrative review. *See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part*, 74 FR 8506 (February 25, 2009) (retroactively revoking an order, in part, to unliquidated entries not subject to a final determination by the Department). We intend to modify the scope of the AD order to read as follows:

In addition, pencils with all of the following characteristics are excluded from the order: novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three-and-one eighth inches in circumference, composed of turned wood encasing one-and-one half inches of sharpened lead on one end and a rubber eraser on the other end. Also excluded are novelty drumstick pencils that are shaped like drumsticks, longer than regular wooden pencils, and do not contain erasers.

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted no later than 14 days after the date of publication of these preliminary results. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than 21 days after the date of publication of these preliminary results.

Consistent with 19 CFR 351.309, parties who submit written comments or rebuttal comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes). Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 10 days of the date of publication of this notice. Further, any hearing, if requested, will be held no later than 25 days after the date of publication of this notice, or the first business day thereafter. All written comments and/or hearing requests must be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).¹ An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time of the deadlines set forth in this notice.

We will issue our final results of this changed circumstances review as soon as practicable following the above comment period, but not later than 270 days after the date on which we initiated the changed circumstances review or within 45 days if all parties agree to our preliminary results, in accordance with 19 CFR 351.216(e).

If final revocation occurs, we will instruct U.S. Customs and Border Protection to end the suspension of liquidation for the merchandise covered by the revocation on the effective date of the notice of revocation and to release any cash deposit or bond. The current requirement for a cash deposit of estimated AD duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

¹ See generally 19 CFR 351.303.

This initiation and preliminary results of review notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216, 351.221(b)(1) and (4), and 351.222(g).

Dated: July 11, 2012.

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

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